



May 5, 2000

Mr. Wyman Hopkins
Administrative Sergeant
Office of the Chief of Police
Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

OR2000-1749

Dear Mr. Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134858.

The Rosenberg Police Department (the "department") received a request for case file numbers 97-30404, 99-24364, and 99-29600. You have supplied the responsive information to this office for review. You claim that the requested information is excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 (a)(2) of the Government Code excepts from public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. Unless a criminal investigation or prosecution has reached a final result other than a conviction or deferred adjudication, it may not be withheld under section 552.108(a)(2). You relate that in each of these cases the "investigation has been concluded, but has not been adjudicated and therefore has not resulted in a conviction or deferred adjudication."

Case numbers 99-24364 and 99-29600 relate to alleged incidents of the crime of burglary that occurred on October 3, 1999 and November 26, 1999, respectively. Burglary is a felony. Penal Code § 30.02. Felony indictments for the crime of burglary may be presented until five years after the commission of the offense. Crim. Proc. Code art. 12.01(4)(a). Therefore, these offenses are subject to prosecution at this time. As neither of these files indicate on their face that the prosecution or investigation of the underlying crimes has reached a final result, we conclude that the information in these files is not excepted from disclosure by section 552.108(a)(2) of the Government Code.

Case number 97-30404 relates to an alleged incident of the crime of criminal mischief, with notation that the loss is greater than \$20.00 and less than \$500.00. This incident occurred December 11, 1997. Incidents of criminal mischief with pecuniary losses of less than \$1,500 constitute misdemeanors. Penal Code § 28.03. An indictment or information for any misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward. Crim. Proc. Code art. 12.02. As the offense in case number 97-30404 is no longer subject to prosecution, we conclude that the investigation of this case has reached a final result. Information in this file may therefore be withheld under section 552.108(a)(2) of the Government Code. Note however that “basic” information about a crime or arrest is not excepted by section 552.108. Gov’t Code § 552.108(c). We consider “basic information” to be the “front page information” made public by *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (delineating types of information that must be released). Open Records Decision No. 127 (1976).

In conclusion, the files of case numbers 99-24364 and 99-29600, as well as the basic information in the file of case number 97-30404, must be released. The remainder of the information in the file of case number 97-30404, may be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

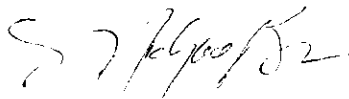
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 134858

Encl Submitted documents

cc: Ms. Landra Dixon
1216 Westwood Drive #811
Rosenberg, Texas 77471
(w/o enclosures)